

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

OFFICE OF
APPELLATE COURTS

MAR 14 2002

Order Promulgating Amendments to
General Rules of Practice

FILED

ORDER

The Minnesota Court Interpreter Advisory Committee has recommended certain amendments to the General Rules of Practice for the District Courts.

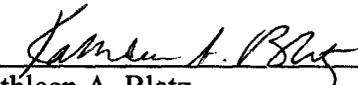
The Court has reviewed the comments received and the proposed amendments and is fully advised in the premises.

IT IS HEREBY ORDERED that:

1. The attached amendments to the General Rules of Practice for the District Courts be, and the same are, prescribed and promulgated to be effective on March 15, 2002.
2. These amendments shall apply to all sign language interpreters used by the Minnesota Judiciary on or after the effective date.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the statements made therein.
4. The Minnesota Court Interpreter Advisory Committee shall monitor the experience under these amendments and by September 30, 2002 advise the Court with respect to any recommended revisions to these rules.

Dated: March 14, 2002

BY THE COURT:



Kathleen A. Blatz
Chief Justice

Minn.Gen.R.Prac, Rule 8
3/12/02

Rule 8.01. Statewide Roster

The State Court Administrator shall maintain and publish annually a statewide roster of certified and non-certified interpreters which shall include:

(a) Certified Court Interpreters: ~~This shall be a list of~~ To be included on the Statewide Roster, certified court interpreters ~~who must~~ have satisfied all certification requirements pursuant to the Minnesota Supreme Court's Rules on Certification of Interpreters.

(b) Non-certified Foreign Language Court Interpreters: ~~This shall be a list of non-certified~~ To be included on the Statewide Roster, foreign language court interpreters, ~~not including sign language interpreters,~~ who have not satisfied the requirements of the Minnesota Supreme Court's Rules on Certification of Court Interpreters, ~~but who may possess interpreting credentials from other governmental agencies or professional associations and who must~~ have: (1) completed the interpreter orientation program sponsored by the State Court Administrator; (2) filed with the State Court Administrator a written affidavit agreeing to be bound by the Code of Professional Responsibility for Interpreters in the Minnesota State Court System as the same may be amended from time to time; and (3) received a passing score on a written ethics examination administered by the State Court Administrator.

(c) Non-certified Sign Language Court Interpreters: ~~This shall be a list of~~ To be included on the Statewide Roster, non-certified sign language court interpreters ~~who have satisfied the requirements set forth in Rule 8.01(b) and possess, at a minimum, both a Certificate of Transliteration and a Certificate of Interpretation from the Registry of Interpreters for the Deaf or an equivalent certification from the Registry of Interpreters for the Deaf or another organization that is approved by the State Court Administrator. must~~

- (1) have satisfied the three requirements set forth above in Rule 8.01(b);
- (2) be a member in good standing with the Registry of Interpreters for the Deaf (RID) or with the National Association of the Deaf (NAD); and,
- (3) possess
 - (i) both a valid Certificate of Transliteration (CT) and a valid Certificate of Interpretation (CI) from RID; or
 - (ii) a valid Comprehensive Skills Certificate (CSC) from RID; or
 - (iii) a valid Level 5 certificate from NAD; or
 - (iv) a valid Certified Deaf Interpreter (CDI) or Certified Deaf Interpreter Provisional (CDIP) certificate from RID; or
 - (v) another equivalent valid certification approved by the State Court Administrator.

ADVISORY COMMITTEE COMMENT 1997 AMENDMENT

It is the policy of the state to provide interpreters to litigants and witnesses in civil and criminal proceedings who are handicapped in communication. Minn.Stat. §§ 611.30-.32 (1996); Minn.R.Crim.P. 5.01, 15.03, 15.11, 21.01, 26.03, 27.04, subd. 2; Minn.Stat. § 546.44, subd. 3 (1996); *see also* 42 U.S.C. § 12101; 28 C.F.R. Part 35, § 130 (prohibiting discrimination in public services on basis of disability).

To effectuate that policy, the Minnesota Supreme Court has initiated a statewide orientation program of training for court interpreters and promulgated the Rules on Certification of Court Interpreters. Pursuant to Rule 8.01 of the General Rules of Practice for the District Courts, the State Court Administrator has established a statewide roster of court interpreters who have completed the orientation program on the Minnesota court system and court interpreting and who have filed an affidavit attesting that they understand and agree to comply with the Code of Professional Responsibility for Court Interpreters adopted by the Minnesota Supreme Court on September 18, 1995. The creation of the roster is the first step in a process that is being undertaken to ensure the competence of court interpreters. To be listed on the roster, a non-certified court interpreter must attend an orientation course provided or approved by the State Court Administrator. The purpose of the orientation is to provide interpreters with information regarding the Code of Professional Responsibility, the role of interpreters in our courts, skills required of court interpreters, the legal process, and legal terminology. Merely being listed on the roster does not certify or otherwise guarantee an interpreter's competence.

In 1997, two key changes were made to this rule. First, interpreters are now required to receive a passing score on the ethics examination before they are eligible to be listed on the Statewide Roster. This change was implemented to ensure that court interpreters on the Statewide Roster have a demonstrated knowledge of the Code of Professional Responsibility.

Second, to be eligible to be listed on the Statewide Roster, non-certified sign language court interpreters are required to possess certificates from the Registry of Interpreters for the Deaf (RID), which demonstrate that the interpreter has minimum competency skills in sign language. This change was recommended by the Advisory Committee because of reports to the Committee that courts were hiring

sign language interpreters who completed the orientation training, but who were not certified by RID. This practice was troubling because prior to the promulgation of Rule 8, courts generally adopted the practice of using only RID certified sign language interpreters to ensure a minimum level of competency. Unlike most spoken language interpreting fields, the field of sign language interpreting is well established with nationally developed standards for evaluation and certification of sign language interpreters. Because of the long history of RID, its certification program, the availability of RID certified sign language interpreters in Minnesota and the recent incidents when courts have deviated from their general practice of appointing RID certified sign language interpreters, the Advisory Committee determined that it is appropriate and necessary to amend Rule 8 to maintain the current levels of professionalism and competency among non-certified sign language court interpreters.

Rule 8.02. Appointment

(a) Use of Certified Court Interpreter. Whenever an interpreter is required to be appointed by the court, the court shall appoint only a certified court interpreter who is listed on the statewide roster of interpreters established by the State Court Administrator under Rule 8.01, except as provided in Rule 8.02(b), and (c) and (d). A certified court interpreter shall be presumed competent to interpret in all court proceedings. The court may, at any time, make further inquiry into the appointment of a particular certified court interpreter. Objections made by a party regarding special circumstances which render the certified court interpreter unqualified to interpret in the proceeding must be made in a timely manner.

(b) Use of Non-certified Court Interpreter On The Statewide Roster. If the court has made diligent efforts to obtain a certified court interpreter as required by Rule 8.02(a) and found none to be available, the court shall appoint a non-certified court interpreter who is otherwise competent and is listed on the Statewide Roster established by the State Court Administrator under Rule 8.01. In determining whether a non-certified court interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator.

(c) Use of Non-certified Foreign Language Court Interpreter Not On The Statewide Roster. Only after the court has exhausted the requirements of Rule 8.02(a) and (b) may the court appoint a non-certified foreign language interpreter who is not listed on the Statewide Roster and who is otherwise competent. In determining whether a non-certified foreign language interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator. ~~In no event shall the court appoint a non-certified sign language interpreter who does not, at a minimum, possess both a Certificate of Transliteration and a Certificate of Interpretation from the Registry of Interpreters for the Deaf or an equivalent certification from the Registry of Interpreters for the Deaf or another organization that is approved by the State Court Administration.~~

(d) Use of Non-certified Sign Language Court Interpreter Not On The Statewide Roster.

Only after exhausting the requirements of Rule 8.02(a) and (b) may the court appoint a non-certified sign language interpreter(s) not on the Statewide Roster. The court must appoint an interpreter(s) who can establish effective communication and who is (are):

- (1) an interpreter who is a member in good standing with RID or NAD who possesses both a valid CT and a valid CI; or a valid CSC from RID; or a valid Level 5 certificate from NAD; or a valid CDI or CDIP certificate; or another equivalent valid certification approved by the State Court Administrator. If no such interpreter is available.
- (2) a team including an interpreter with a valid CDI or CDIP certificate and an interpreter who has a valid CI or a valid CT from RID. If no such interpreters are available, as a last resort.
- (3) an interpreter with a valid CI from RID.

ADVISORY COMMITTEE COMMENT 1997 2002 AMENDMENT

Rule 8.02(a) requires that courts use certified court interpreters. If certified court interpreters are not available or cannot be located, courts should next use only interpreters listed on the statewide roster maintained by the State Court Administrator. Rule 8.02 recognizes, however, that in rare circumstances it will not be possible to appoint an interpreter from the statewide roster. Non-roster interpreters and telephone interpreting services, such as AT & T's Language Lines Service, should be used only as a last resort because of the limitations of such services including the lack of a minimum orientation to the Minnesota Court System and to the requirements of court interpreting. For a detailed discussion of the issues, see Court Interpretation: Model Guides for Policy and Practice in the State Courts, chapter 8 (National Center for State Courts, 1995), a copy of which is available from the State Court Administrator's Office.

To avoid unreasonable objections to a certified court interpreter in a proceeding, the rule makes a presumption that the certified court interpreter is competent. However, the rule also recognizes that there are situations when an interpreter may be competent to interpret, but not qualified. Examples of such situations include when an interpreter has a conflict of interest or the user of the interpreter services has unique demands, such as services tailored to a person with minimal language skills, that the interpreter is not as qualified to meet.

Rule 8.02(b) requires that courts make "diligent" efforts to locate a certified court interpreter before appointing a non-certified court interpreter. Because the certification process is still in an early stage and because it is important to ensure that courts use competent interpreters, courts should seek the services of certified court

interpreters who are located outside the court's judicial district if none can be found within its own district. In addition, courts should consider modifying the schedule for a matter if there is difficulty locating a certified interpreter for a particular time.

Because the certification program being implemented by the State Court Administrator is still new, interpreters are being certified in only certain languages at this time. The Advisory Committee recognizes that it may be some time before certification is provided for all languages used in our courts. However, the committee feels strongly that for those languages for which certification has been issued, the courts must utilize certified court interpreters to ensure that its interpreters are qualified. If a court uses non-certified court interpreters, court administrators should administer the screening standards prior to hiring an interpreter. However, the presiding judge is still primarily responsible for ensuring the competence and qualifications of the interpreter. A model voir dire to determine the competence and qualifications of an interpreter is set forth in the State Court Administrator's Best Practices Manual on Court Interpreters.

The Supreme Court has received reports that courts do not always comply with Rule 8.02(b)'s requirements that courts make "diligent" efforts to locate a certified court interpreter before appointing a non-certified court interpreter. Apparently there is some confusion about the meaning of "diligent" efforts. To clarify, to satisfy the diligent efforts requirement a court must demonstrate that, after receiving a request for an interpreter, the court made prompt attempts to hire a certified court interpreter. If the court could not find a certified court interpreter within its judicial district, it must show that it attempted to locate a certified interpreter in another judicial district. If no certified interpreter is available, the court must consider modifying the schedule for the matter before resorting to hiring a non-certified court interpreter.